



THE STATE
of **ALASKA**
GOVERNOR SEAN PARNELL

Department of Transportation and
Public Facilities

Design & Engineering Services
Environmental Section

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September 24, 2013

Kristine Karlson
Environmental Protection Agency
1200 6th Avenue, Suite 900 (OCE-133)
Seattle, Washington 98101

Dear Ms. Karlson:

The Consent Decree entered into between the Environmental Protection Agency ("EPA"), and the State of Alaska, Department of Transportation and Public Facilities ("DOT&PF") on September 21, 2010 provides that after three years, DOT&PF may request to terminate the requirements of Section III. Pursuant to Paragraph 41 of the Consent Decree, DOT&PF hereby requests the termination of all the requirements of Section III of the Consent Decree as of September 22, 2013.

DOT&PF has complied with its requirements under the Consent Decree, and we believe that termination of Section III is warranted at this time. Paragraph 41.c. requires DOT&PF to certify and demonstrate its compliance with the Consent Decree. On behalf of DOT&PF, I hereby certify that the following statements are true.

- (1) DOT&PF has paid all monies, civil penalties, interest and stipulated penalties due under the Decree.
 - (a) DOT&PF paid the civil penalty of \$140,000 to the United States on October 1 and October 4, 2010.
 - (b) DOT&PF paid the mitigation contribution of \$850,000 to the Kachemak Heritage Land Trust on October 20, 2010.
 - (c) No interest payments have been assessed on any penalties or other payments owed by DOT&PF.
 - (d) DOT&PF has not received any written demand from the United States for payment of stipulated penalties pursuant to Paragraph 52. However, in the event that the EPA makes a written demand after receiving this request to terminate,

DOT&PF intends to comply fully with Section VII of the Consent Decree, which covers fulfillment of obligations.

- (2) DOT&PF is in compliance with all parts of Section III of the Consent Decree.

Paragraph 5:

- (a) DOT&PF has trained and certified its Regional Stormwater Specialists, Project Engineers, and Stormwater Inspectors in an approved AK-CESCL training program, and has fulfilled all other requirements of Paragraph 5.a.
- (b) DOT&PF has modified its standard contract specifications to provide that its contractors' superintendents and SWPPP managers have current AK-CESCL or equivalent certification before performing work on any DOT&PF Project (as defined in the Consent Decree).
- (c) DOT&PF has neither made nor requested any major modification to the AK-CESCL Program that would require approval by EPA.
- (d) DOT&PF has accepted certification from the programs listed in Paragraph 5.d. as equivalent to certification under the AK-CESCL Program.

Paragraph 6:

DOT&PF has substantially complied with the requirements of Paragraph 6. DOT&PF's 2010-2012 Annual Reports document all instances of non-compliance. Most instances of non-compliance with this paragraph have involved clerical errors that did not create a water quality issue, such as failure to cite the proper reference to a BMP manual or publication where a BMP was installed properly. In 2010, there were 27 instances of non-compliance with Paragraph 6. In 2011, there were 109 non-compliances, and in 2012 there were 47 instances of non-compliance with Paragraph 6.

Paragraph 7:

DOT&PF has substantially complied with the requirements of Paragraph 7. DOT&PF's 2010-2012 Annual Reports document all instances of non-compliance with the Inspection Program. There were 96 instances of non-compliance with Paragraph 7 in 2010, 265 in 2011, and 181 in 2012. As with Paragraph 6, the vast majority of the non-compliances with Paragraph 7 were relatively minor errors that did not affect water quality. Common minor errors include providing an incorrect AK-CESCL certification number or expiration date (when the person did in fact have proper certification), missing one or more of the required pieces of information on weather and/or storm events, and overlooking boxes that need to be checked on the inspection report. DOT&PF believes that although Paragraph 7 non-compliances account for the largest proportion of non-

compliances overall, the fact that the majority of these non-compliances are relatively minor means that DOT&PF is substantially compliant with Paragraph 7.

Paragraph 8:

DOT&PF has substantially complied with the requirements of Paragraph 8. DOT&PF's 2010-2012 Annual Reports document all instances of non-compliance with Project Maintenance requirements. There were 9 instances of non-compliance with Paragraph 8 in 2010, 29 in 2011, and 17 in 2012. DOT&PF made a minor modification to the Delayed Action Item Report Form in 2010 that was not required to be approved, but DOT&PF reported the modification in its 2011 Annual Report. There was no objection to the minor modification.

Paragraph 9:

DOT&PF has substantially complied with the requirements of Paragraph 9. DOT&PF's 2010-2012 Annual Reports document all instances of non-compliance with Reporting requirements. There were zero instances of non-compliance in 2010, four in 2011, and six in 2012. The annual report required by Paragraph 9.c. was completed on time in 2010, 2011, and 2012, and EPA has not identified any deficiencies in any of DOT&PF's annual reports.

- (3) EPA has not provided DOT&PF with any Notice of Dispute regarding any part of Section III, and there are no unresolved matters regarding Section III subject to dispute resolution.
- (4) No enforcement action is pending regarding any requirement in Section III.

Consent Decree non-compliant trends in the calendar years 2011 and 2012 indicate steps taken by DOT&PF to minimize instances of non-compliance and implement consistent paperwork and reporting protocols are having a positive impact. Figure 1, below, shows the decline in decree noncompliance. Key points regarding Consent Decree compliance trends include:

- (1) There was a ~39% decrease in yearly total non-compliance instances between 2011 and 2012.
- (2) Of the one thousand fifteen (1515) inspections performed in 2011, 73% were compliant and of the one thousand six hundred and thirty-one (1631) inspections performed in 2012 ~84% were compliant. This accounts for a 16% overall reduction in total non-compliance from 2011 to 2012.

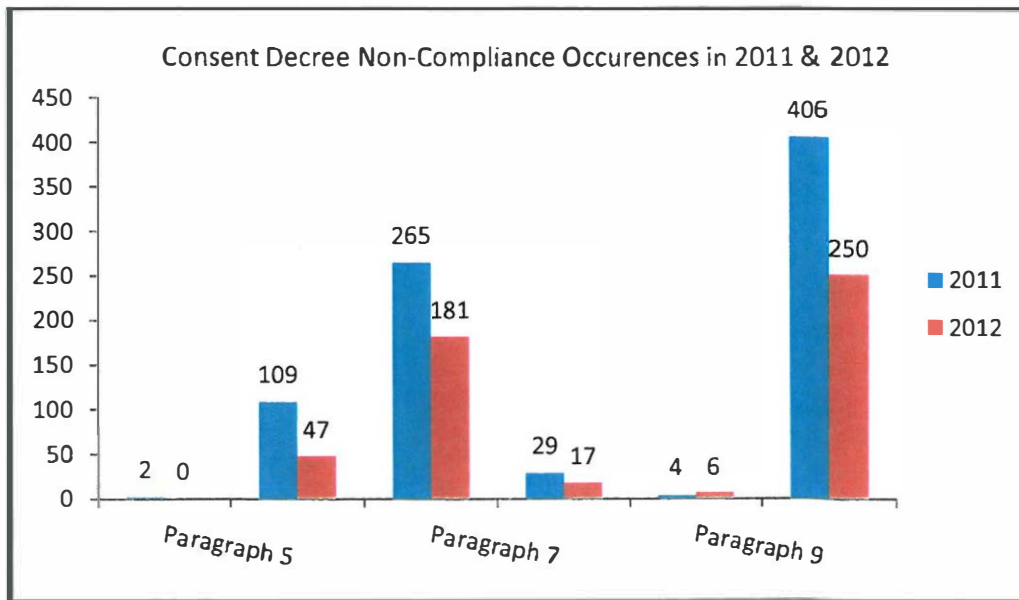


Figure 1. Decree non-compliance in 2011 and 2012. Paragraph 5 - Training; Paragraph 6 - Construction and SWPPP Requirements; Paragraph 7-Inspection Program; Paragraph 8 - Project Maintenance; Paragraph 9 –Reporting

The Consent Decree provides that the United States will notify DOT&PF in writing within 30 days of receiving this request whether it objects to a request for termination. Thank you for considering this request to terminate Section III.

Sincerely,

Kris Benson,
Environmental Program Manager

cc:

David F. Askman, Attorney, U.S. Department of Justice
W. Benjamin Fisherow, Chief, Environmental Enforcement Section, U.S. Department of Justice
Letitia Grishaw, Chief, Environmental Defense Section, U.S. Department of Justice
Mark A. Nitzynski, Attorney, U.S. Department of Justice
Phil North, Wetlands Compliance Officer, EPA Region 10
Michael Szerlog, Manager Aquatic Resources, EPA Region 10
Ankur Tohan, Assistant Regional Counsel, EPA Region 10